Supreme Court, U. S.
FILED
JUN 11 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1953

DAVID R. FREEMAN,
Director, State of Missouri Department of Social Services,
and,
JOHN ZUMWALT,
Director, State of Missouri Department of Social Services,
Division of Family Services,
Petitioners,

v.

LOU EMMA CHAMBLY, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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June, 1980

KELLY PRESS, INC., 201 South Eighth Street, Columbia, Missouri Dial 449-4163

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. _____

DAVID R. FREEMAN,
Director, State of Missouri Department of Social Services,
and,
JOHN ZUMWALT,
Director, State of Missouri Department of Social Services,
Division of Family Services,
Petitioners,

v.

LOU EMMA CHAMBLY, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioners, David R. Freeman and John Zumwalt, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on April 24, 1980.

OPINIONS BELOW

The opinion of the Court of Appeals, *Chambly* v. *Freeman,* No. 79-2006, appears in Appendix 1 hereto. The order of the Court of Appeals awarding fees to respondents' attorneys appears in Appendix 2. The opinion of the United States District Court for the Western District of Missouri,

officially reported at 478 F.Supp. 1221, appears in Appendix 3.

JURISDICTION

The opinion of the Court of Appeals for the Eighth Circuit was entered on April 24, 1980. On May 16, 1980, the Court of Appeals entered its order awarding attorneys' fees. This petition for certiorari was filed within ninety (90) days of those dates. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the provisions of 42 U.S.C. §602(a)(7), and this Court's holding in *Shea* v. *Vialpando,* 416 U.S. 251 (1974), forbid a state from implementing reasonable guidelines in the administration of its AFDC program defining the amounts allowable to working AFDC recipients/applicants as deductions for transportation, clothing and lunch expenses incurred by these individuals in producing earned income.

2. Whether the Missouri procedure allowing working AFDC recipients/applicants who operate an automobile a 17¢ per mile deduction to cover their transportation expense attributable to the production of income constitutes a reasonable limitation upon this expense within the meaning of 42 U.S.C. §602(a)(7) and this Court's holding in *Shea* v. *Vialpando,* 416 U.S. 251 (1974).

3. Whether the Missouri procedure allowing working AFDC recipients/applicants a one dollar ($1.00) per day deduction (an amount in addition to the 30¢ per meal per day allowance for food in the recipient's basic grant) to cover their lunch expense attributable to the production of income constitutes a reasonable limitation upon this expense within the meaning of 42 U.S.C. §602(a)(7) and this Court's holding in *Shea* v. *Vialpando,* 416 U.S. 251 (1974).

4. Whether the Missouri procedure allowing working AFDC recipients/applicants a deduction for only the expense of purchasing special work uniforms (an allowance in addition to the amount contained in a recipient's basic grant to cover general clothing) to cover their clothing expense attributable to the production of income constitutes a reasonable limitation upon this expense within the meaning of 42 U.S.C. §602(a)(7) and this Court's holding in *Shea* v. *Vialpando*, 416 U.S. 251 (1974).

5. Whether the Court should consider the position and practice of the Department of Health, Education and Welfare when interpreting the meaning to be given to the provisions of 42 U.S.C. §602(a)(7) relating to deductions allowable for transportation, clothing and lunch expenses of working AFDC recipients/applicants.

6. Whether 42 U.S.C. §1988 confers upon federal courts of appeals the authority to award attorneys fees to prevailing parties.

7. Whether 42 U.S.C. §1988 authorizes the award of attorneys' fees to prevailing parties who are represented by publicly funded legal aid attorneys and thus incur no expense for attorneys' fees in an action.

8. Whether 42 U.S.C. §1988 authorizes the award of attorneys' fees in a case where a state regulation is found to be inconsistent with the provisions of the Social Security Act, 42 U.S.C. §602(a)(7), and is thereby invalidated under the Supremacy Clause.

STATUTES AND FEDERAL REGULATIONS INVOLVED

42 U.S.C. §602(a)(7):

> "[T]he State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to

families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the needs of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income. . . ."

45 C.F.R. §233.20(a)(7)(i):

"Provide that the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of 'earned income' and all work expenses, personal and non-personal, will then be deducted. Only the net amount remaining will be applied in determining need in the amount of the assistance payment."

45 C.F.R. §233.20(a)(6)(iv):

"With reference to commissions, wages, or salary, the term 'earned income' means the total amount, irrespective of personal expenses such as income-tax deductions, lunches and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers."

STATEMENT OF THE CASE

The respondents initiated this lawsuit by filing a complaint for "injunctive, declaratory and other relief" on July 11, 1979, in the United States District Court for the Western District of Missouri. The Complaint premised federal jurisdiction on 28 U.S.C. §§1331 and 1343(3) and (4), 28 U.S.C. §§2201, 2202, 42 U.S.C. §1983 and 42 U.S.C. §601,

et seq. The named plaintiffs purported to sue in their own behalf and on behalf of a purported class of employed heads of households whose eligibility for or amount of AFDC grant was effected by Missouri's policy respecting deductions for work-related expenses in the areas of lunch, clothing and personal transportation. The policy challenged by the plaintiffs provided that the AFDC applicant or recipient could, at his or her option, choose to itemize their work-related expenses. If itemized, 60¢ per meal was allowed for lunch, 15¢ per mile was allowed for personal transportation, and the cost of uniforms and special shoes was allowed. Specifically, the Missouri Division of Family Service's Manual, Chapter 1, Section III, f(5) reads as follows:

> "(5) *Costs of Producing Income in Excess of Personal Standard*—Expenses in this item are allowed for only that portion that exceeds the personal standard for clothing (the use of which is limited to the employment such as uniforms and special shoes, etc.), transportation (which includes the expenses of transporting a child to and from a child care center or babysitter), lunches, union dues, mandatory retirement, etc., related to employment. (See Appendix A or the chart on the IM-2C for the personal standard amounts allowed the claimant in Tables A and B because these amounts vary with the level of income.
>
> If the claimant has stated on the IM-2C that she does not wish to claim actual personal work related expenses, no further investigation into these expenses of producing income must be made.
>
> If the claimant has stated on the IM-2C that she does wish to claim actual personal work related expenses and her total costs for uniforms, lunches,

transportation and union dues, etc., exceed that allowed in the personal standard, the *difference between the personal standard and the actual costs may be allowed.* This difference should be added to items (1)-(4) above and shown as Other Expense of Producing Income on the IM-30. If the claimant's costs for the expenses mentioned in item (5) are less than the personal standard, only items (1)-(4) are shown as Other Expenses of Producing Income.

Before allowing the costs in item (5) as an expense of producing income, such costs must be verified when practical to do so and explained otherwise. If the costs or explanation of them are not reasonable in the worker's and/or supervisor's judgment, verification must be provided.

In determining transportation cases, the cheapest mode of transportation reasonably available will be used. Transportation by car will be allowed at the rate of 15¢ per mile. The 15¢ allowed includes all costs incurred, including such things as parking fees. Transportation by bus or by taxicab (if required) will be allowed on an as-paid basis.

When the claimant has meal expense (either buying or bringing from home) because of her employment, allow 60¢ per meal as an expense.

The formula to be used to determine the total amount to be allowed as *Other Expense of Producing Income* is as follows:

(1) Verify or explain the total cost of expense for clothing, transportation, lunches, union dues, mandatory retirement, etc., as shown in item (5).

(2) Subtract the personal standard already included in Tables A and B (See Appendix A or the chart on the IM-2C for the amount).

(3) Add this balance to any expenses for items (1)-(4) and enter on the IM-30 under 'Other Expenses of Producing Income.' ''

Before the District Court entered its opinion and order in this cause, the meal allowance had been increased to $1.00 per day and the mileage rate to 17¢ per mile. The trial of this cause was held in the District Court on August 17 and September 6 and 7, 1979.

The respondents claim that expenses incurred in the operation of their automobiles for work-related transportation exceed the 17¢ per mile allowed by the state as a deduction for transportation expense under 42 U.S.C. §602 (a)(7). Respondent Schoue claims that it costs her 20¢ per mile to operate her 1968 Pontiac LeMans for work-related transportation and respondent Loeffel claims that it costs her 29¢ per mile to operate her 1977 Ford Pinto for work-related transportation.

None of the respondents are required to wear any special type of uniform in connection with their employment. However, the respondents maintain that so-called dress codes of their respective employers require that they present a neat appearance and consequently they must maintain a separate wardrobe of "work" clothing. Two of the respondents state that their other wardrobe of "disco" clothing would be inappropriate for work.

The respondents also incur lunch expenses in excess of $1.00 per day because they choose to eat at restaurants near their places of employment, rather than bringing their lunch to work. All of the respondents concede that their respective employers do not prohibit them from bringing

their lunches and in fact provide a place for them to eat on the premises.

The state of Missouri allows working AFDC recipients and applicants a standard deduction of $30.00 per month for work-related expenses. However, if the recipient/applicant desires to do so, he or she may choose to itemize deductions in the areas of transportation, lunch and clothing.

If the recipient/applicant chooses to itemize work-related expenses in the area of transportation, he or she is allowed a deduction of 17¢ per mile for any work-related mileage including transportation to and from work. The 17¢ per mile allowed by the state of Missouri for this expense is equivalent to the mileage amount allowed state employees for the operation of their motor vehicles on state business and it is supported by a study of the Missouri Office of Administration showing that the figure includes depreciation, repairs and maintenance, replacement of tires, accessories, gas, oil, insurance, interest, taxes and fees both state and federal, including registration and titling of the vehicle. The study conducted by the Missouri Office of Administration establishes that the 17¢ per mile figure is adequate to compensate the operation of all motor vehicles except a large, new, gas-guzzling automobile. The only car not fully compensated by the 17¢ per mile figure in the study was a brand new Chevrolet Impala with a V-8 engine and air-conditioning.

In the area of clothing, Missouri allows AFDC recipients/applicants to deduct as an expense reasonably attributable to the production of income the cost of any uniforms or special shoes required to be purchased by the individual in connection with his or her employment. The state does not allow a recipient or applicant to deduct the cost of clothing other than uniforms or special shoes when the individual can wear this clothing away from the job

as well as at work. With regard to recipients, the basic AFDC grant includes in every instance a component to cover the cost of general clothing.

The state of Missouri allows an AFDC recipient/applicant to deduct as an expense reasonably attributable to the production of income an amount of $1.00 per day for lunch. In the case of AFDC recipients the basic grant includes a component of 30¢ per meal per day to cover the cost of food. The $1.00 allowed by the state of Missouri as a deduction for those working AFDC recipients who choose to itemize their deductions is in addition to the amount for food contained in the basic grant. A publication by the United States Department of Agriculture prepared in the summer of 1979 and entitled "Family Economics Review" establishes that the average cost of a meal for a female between the ages of 20 and 54 years, a category in which all of the named respondents fall, varies between 54¢, for what is considered a thrifty plan, to 70¢ for a low cost plan, to 88¢ for a moderate cost plan, and up to $1.00 for a liberal plan.

At least sixteen states follow a procedure allowing a standard mileage amount to cover transportation expense in this area. At least twenty-four states require that before a working AFDC recipient/applicant may deduct the cost of clothing as a work-related expense, the clothing must be either a uniform or special shoes required by the employment. Most states do not appear to allow any additional deduction for the cost of lunch beyond that included in the basic grant. The procedures followed by Missouri and other states for handling deductions for work-related expenses pursuant to 42 U.S.C. §602(a)(7) were adopted subsequent to this Court's opinion in the case of *Shea* v. *Vialpando*, and with the expressed approval of the United States Department of Health, Education and Welfare.

On November 1, 1979, the United States District Court for the Western District of Missouri, Judge Elmo B. Hunter, Presiding, entered its Opinion and Order declaring that the petitioners had violated Title 42 U.S.C. §602(a)(7) and its implementing regulations, by their procedures for handling food, clothing and transportation expense deductions for working AFDC recipients/applicants, and enjoining the petitioners from enforcing those portions of the Missouri Division of Family Services' Manual, Chapter 1, Section III, f(5), which contain the procedures for allowing food, clothing and personal transportation deductions for employed AFDC applicants and recipients. In essence, the District Court held that the petitioners may not limit the deductions allowed for transportation, food and clothing to 17¢ per mile, $1.00 per day, and uniform and special shoes respectively. The court held that unless the AFDC recipients/applicants are allowed to show expenses in excess of the amounts utilized by the state of Missouri in the areas of transportation and lunch and claim expenses for clothing other than uniforms and special shoes, the Missouri procedure violates 42 U.S.C. §602(a)(7) and this Court's holding in *Shea* v. *Vialpando.*

The petitioners filed their notice of appeal and motion for a stay of proceedings to enforce judgment pending appeal on November 9, 1979. On April 24, 1980, the United States Court of Appeals for the Eighth Circuit issued an order affirming the judgment of the District Court based upon the opinion of the lower court.

REASONS FOR GRANTING THE WRIT

I.

The decision below finding that the state of Missouri could not implement reasonable guidelines in the administration of its AFDC program defining the amounts allowable to working AFDC recipients/applicants as deductions for transportation, clothing and lunch expenses incurred in the production of income misinterprets the provisions of 42 U.S.C. §602(a)(7) and this Court's holding in the case of Shea v. Vialpando, **416 U.S. 251 (1974), and as such constitutes an important question of federal law which has not been, but should be, settled by this Court.**

In its opinion of November 1, 1979, which was adopted *in toto* by the Court of Appeals on April 24, 1980, the District Court acknowledged the fact that the Missouri procedure under attack here is distinguishable from the Colorado procedure involved in the case of *Shea* v. *Vialpando,* 416 U.S. 251 (1974). Nonetheless, the court went on to base its decision in the instant case on the "basic thrust" of the *Shea* opinion. The petitioners respectfully submit that the District Court and the Court of Appeals have misinterpreted the holding of this Court in the *Shea* case.

In *Shea* v. *Vialpando,* this Court granted certiorari

> ". . . to determine whether, in light of §402(a)(7), a State may adopt *a standardized allowance* for expenses attributable to the earning of income which does not allow an applicant to deduct expenses that exceed *the standard*. . . ." 416 U.S. 252, 253 (Emphasis supplied).

It is at once obvious that the question in *Shea* was whether a state could utilize *a single standard* amount to compensate the recipient for *all expenses* related to producing income. This Court did not hold that states are required to allow

every expense submitted by recipients and claimed to be attributable to producing income. On the contrary, this Court in *Shea* specifically held that a limitation of "reasonableness" may be placed upon the recognition of expenses associated with the production of income. 416 U.S. 260, 266. This Court in *Shea* was obviously interested in seeing that recipients are not locked into an absolute $20, $30, or $40, etc., per month maximum to cover all the expenses of producing income. But this Court did not conclude that the lid should be taken off altogether, and the recipent allowed to claim expenses in any amount he so desires so long as he can verify the expenditure. The control of the program in this respect was left to the states since they were given the clear authority to place limitations upon the claimed expenses based upon "reasonableness." The evidence presented in the instant case showed that this is precisely what is done under Missouri's procedures in the areas of lunch, clothing and transportation expense deductions.

In regard to lunch expenses, the testimony at trial indicated that the basic grant provided recipients includes a food allocation of approximately 30¢ per meal per day. In addition, the regulations of the Missouri Division of Family Services allow a deduction for lunch expenses for working AFDC recipients of $1.00 per day. This means that the state is in effect allowing the recipient $1.30 per day for lunch. The evidence presented by the petitioners also established that $1.30 was more than enough to prepare an adequate lunch to take to work. None of the named plaintiffs testified that they were prohibited from bringing their lunch to work, and there is no evidence to show that any member of the class faces such a prohibition. The petitioners submit that it is reasonable to limit the lunch expense to an amount sufficient to bring one's lunch to work. This is an adequate incentive, and there is no necessity for the

petitioners to allow recipients to eat out just because they choose to do so. It is clear that the petitioners may place a limitation on the lunch expense deduction, and since the expenditure of public funds is involved here, this limitation on the amount of lunch expense deduction is reasonable.

In the area of clothing, the state procedure allows a deduction for uniforms or special clothing necessary to obtain and hold a job. Petitioners submit that this limitation is reasonable since once again the basic grant includes an amount to cover general clothing. The federal regulations in this area also refer to "uniforms" as a limitation when discussing the clothing deduction. See 45 C.F.R. §233.20(a)(6)(iv).

The testimony in this case established that the named plaintiffs could wear the clothes worn to work at any time or place, but that they *chose* not to do so, because they maintained a separate wardrobe of "disco clothes" for their social pleasure. Is it unreasonable for the state to take the position that it is not required to assist recipients or applicants in funding separate wardrobes for social events? Petitioners think not.

In the area of transportation, the state allows 17¢ per mile for recipients to drive their cars to and from work and on the job. Mr. Jerry Yarrington of the Missouri Office of Administration testified at trial that this figure is utilized by the state to reimburse its employees *and* that it includes components to cover depreciation, repairs and maintenance, tires, accessories, gas, oil, insurance, finance charge, all taxes, registration fees and titling costs. The witness went on to state that based on his department's study to support the 17¢ per mile figure, it was sufficient (more than sufficient in the case of most cars) to fully cover the cost of operating the vast majority of automobiles. He stated that the only category of automobile not

covered completely by the 17¢ figure is a large, brand new, full size car whose cost of operation is high due to the expensive nature of the vehicle (maintenance, repairs, depreciation and finance charge), and its fuel inefficiency.

The Internal Revenue Service has also computed a standard mileage allowance for income tax deduction purposes. See CCH, *Standard Federal Tax Reporter*, Vol. 2, Reg. 1.162-2, pp. 17106-17107. The IRS also uses a figure of 17¢ per mile to cover all operating and fixed costs when a taxpayer seeks a deduction for business related travel expense. The costs covered by this allowance includes gas, oil, repairs, license tags, insurance, and depreciation. Please note that the IRS allows 17¢ per mile only for the first fifteen thousand miles, and 10¢ per mile thereafter.

There can be no dispute that the state may put a reasonable limitation on the transportation expense deduction. The mileage figure is simply one way of imposing this limitation rather than dictating the type of car a recipient may purchase or the number of tune-ups, oil changes, types of repairs or insurance, etc., a recipient may obtain in order to claim a "reasonable transportation expense." The mileage figure is also based upon a study as to the cost of operation over a reasonable period of time rather than a cost of operation based upon a limited period which does not adequately reflect the actual overall cost of operating a motor vehicle, but rather looks at such cost in a vacuum.

The petitioners refer again to this Court's decision in *Shea* v. *Vialpando*, 416 U.S. 251 (1974). In addition to allowing the additional cost of alimony and child support payments ordered by courts, garnishment of wages, city earning taxes, and child care costs, the state of Missouri automatically allows a personal standard work-related expense deduction of up to $30.00, depending upon the amount

of adjusted gross income of the applicant or recipient, to cover, among other things, the cost of transportation, clothing and lunches. In addition to the personal standard, Missouri AFDC recipients and applicants can choose to itemize, among other expenses, the expenses of personal transportation, at 17¢ per mile, lunch expense, at $1.00 per day and uniforms and special shoes at their actual cost. The Colorado regulation at issue in *Shea* did not allow for such an itemization. In reaching its decision invalidating the Colorado regulation creating a standard deduction as the absolute maximum work-related expense allowed, this Court reasoned as follows:

> "By its terms, § 402(a)(7) requires the consideration of 'any' reasonable work expenses in determining eligibility for AFDC assistance. In light of the evolution of the statute and the normal meaning of the term 'any' we read this language as a congressional directive that no limitation, *apart from that of reasonableness,* may be placed upon the recognition of expenses attributable to the earning of income. Accordingly, *a fixed work expense allowance* which does not permit deductions for expenses in excess of that standard is directly contrary to the language of the statute." 416 U.S. at 260 (Emphasis added).
>
> "It is, of course, not the adoption of a standarized work expense allowance per se which we hold to be violative of § 402(a)(7) of the Act, but the fact that the standard used by Colorado is in effect a maximum or absolute limitation upon the recognition of such expenses. As the Court of Appeals correctly observed, a standard allowance would be permissible, and would substantially serve petitioners' interest in administrative efficiency, if it provided for individualized consideration of expenses in excess of the personal standard. [Citations omitted]. Such a standard allowance

would comport fully with the statutory requirement that any *reasonable* work expenses be considered and would allow individualized treatment where necessary." 416 U.S. at 264-265 (Emphasis added).

It should be clear that the *Shea* court was confronted with a substantially different issue than was present in the instant case. Missouri's personal standard work-expense deduction, of the same dollar amount as that present in the defective Colorado regulation, automatically provides a work-related expense deduction for AFDC applicants and recipients. However, those applicants and recipients have available the option of itemizing such work-related expenses as personal transportation, lunches, and uniforms and special shoes. The *Shea* opinion does clearly demonstrate, however, what the precise issue in this case should be. That is, does the method provided by Missouri to itemize the expenses of producing income, when they exceeded the personal standard, comport with the reasonableness requirement of 42 U.S.C. §602(a)(7)? The petitioners submit that this question must be answered in the affirmative.

This question is a significant one to Missouri and the numerous other states who follow procedures similar or identical to the Missouri procedure. At least sixteen states follow a procedure allowing a standard mileage amount to cover transportation expense in this area. At least twenty-four states require that before a working AFDC recipient/applicant may deduct the cost of clothing as a work-related expense, the clothing must be either a uniform or special shoes required by the employment. Most states do not appear to allow any additional deduction for the cost of lunch beyond that included in the basic grant. The procedures followed by Missouri and other states for handling deductions for work-related expenses pursuant to 42 U.S.C.

§602(a)(7) were adopted subsequent to this Court's opinion in the case of *Shea* v. *Vialpando,* and with the expressed approval of the United States Department of Health, Education and Welfare. Therefore, the petitioners urge this Court to grant certiorari in the instant case because it involves an important question of federal law which has not been, but should be, settled by this Court.

II.

The decision below refusing to consider the position and practice of the Department of Health, Education and Welfare when interpreting the meaning to be given to the provisions of 42 U.S.C. §602(a)(7) relating to deductions allowable for transportation, clothing and lunch expenses of working AFDC recipients/applicants, is in conflict with applicable decisions of this Court.

The Department of Health, Education and Welfare approved the Missouri AFDC plan under consideration here while aware of this state's policies with respect to personal transportation, lunch and uniform expenses. In addition, Mr. Burt Launius, State Program Officer for the Midwest Region of HEW, testified that standard meal allowances and standard mileage reimbursement for personal transportation were considered by HEW as reasonable methods for a state to provide for the deduction of work-related expenses. He also testified as to HEW's approval of Missouri's uniform policy, stating in addition that deductions for clothing that could be worn in other than work conditions would meet HEW audit resistance.

In *Shea* v. *Vialpando,* 416 U.S. 251 (1974) this Court did not consider HEW's expressed position with respect to the challenged Colorado regulation. That was understandable. Colorado did not provide for the work expenses reasonably attributable to the earning of income, but, to

the contrary, that state grouped all such expenses into a $30.00 maximum standard without any attempt to create exceptions, standard or otherwise. In this case, the issue is considerably different. Missouri allows AFDC recipients to itemize personal transportation, lunch and uniform expenses. The question is whether Missouri's method of allowing that itemization is reasonable. Congress provided no definition for the term "reasonably attributable to the earning of income" used in Title 42 U.S.C. §602(a)(7). HEW also failed to define that term for the states in its regulations promulgated pursuant to the Social Security Act. Therefore, it is only reasonable to look toward and afford deference to the position and practice of the Department of Health, Education and Welfare, which is required by law to administer the AFDC program. As this Court observed in *Southwestern Sugar & Molasses, Co.* v. *River Terminals Corporation,* 360 U.S. 411 (1959), to hold that an issue is:

> "[U]ltimately for judicial rather than administrative resolution . . . does not mean that the courts must therefore deny themselves the enlightment which may be had from a consideration of the relevant . . . facts which the administrative agency charged with regulation of the transaction is peculiarly well equipped to marshall and initially to evaluate. . . ."

See also, *Far East Conference* v. *United States of America,* 342 U.S. 570 (1952); *Rosado* v. *Wyman,* 397 U.S. 397 (1970); and *Mathews* v. *Eldridge,* 424 U.S. 319 (1976).

As this Court pointed out in the case of *Volkswagenwerk Aktiengesellschaft* v. *Federal Maritime Commission,* 390 U.S. 261 (1968):

> "The construction put on a statute by the agency charged with administering it is entitled to deference by the courts, and ordinarily that construction will

> be affirmed if it has a 'reasonable basis in law.' NLRB v Hearst Publications, 322 U.S. 111, 131, 88 L ed 1170, 1185, 64 S Ct 851 [(1941)]; . . ." *Id.* at 272.

In the instant case the courts below refused to consider the interpretation placed upon 42 U.S.C. §602(a)(7) by the Department of Health, Education and Welfare in the area of work-related expenses for personal transportation, clothing and lunches. Missouri and numerous other states have, of course, followed the interpretation provided by the Department of Health, Education and Welfare and relied upon that agency's approval of their various plans regarding the allowance of deductions for work-related expenses in the areas of transportation, clothing and lunches. The petitioners believe that the lower courts' refusal to give deference to the position and practice of the Department of Health, Education and Welfare with regard to these expenses is clearly in conflict with the above-cited decisions of this Court.

III.

The decision below awarding attorneys' fees on appeal presents an important question of federal law which should be settled by this Court, i.e., **does 42 U.S.C. §1988 authorize the federal courts of appeal to award attorneys' fees.**

On May 16, 1980, in response to the respondents' motion for an award of attorneys' fees, the court below awarded $1,500 in attorneys' fees in connection with the appeal of this case.

Neither 42 U.S.C. §1988 nor any other federal statutory provision expressly authorizes the federal courts of appeal to award attorneys' fees. Without such expressed authorization, the authority to award such fees does not exist. *Alyeska Pipeline Service Co.* v. *Wilderness Society,* 421 U.S. 420 (1975). Section 1988, by its specific terms, confers

jurisdictional powers only upon the district courts, including the discretion to award attorneys' fees to prevailing parties.

The United States Court of Appeals for the Eighth Circuit has, as a routine matter, been awarding attorneys' fees on appeal claiming jurisdiction to do so under §1988. Unless this Court addresses, for the first time, whether §1988 permits the federal courts of appeal to award attorneys' fees, it must be assumed that the Eighth Circuit will continue to make such awards without authority or jurisdiction.

IV.

The decision below that attorneys' fees could be awarded in a case decided under the Supremacy Clause, presents an important question of federal law which has not been, but should be, settled by this Court.

This case was decided by the District Court based upon the provisions of 42 U.S.C. §602(a)(7). The Court found that the Missouri regulations in question were contrary to the provisions of this federal statute. The primary thrust of the appellees' case at the District Court level and the only basis for their position in the appellate court was their statutory claim. The Court of Appeals in a one-page opinion affirmed the decision of the District Court based upon the latter's opinion. The District Court specifically found it unnecessary to reach appellees' constitutional claims because it was able to dispose of the case entirely upon the statutory grounds.

The petitioners submit that the constitutional or fee claim allegedly raised by the respondents in this case was clearly insubstantial. The respondents' allegation that the challenged Missouri regulation was in violation of the Equal Protection and Due Process Clauses was totally without

merit. Such case law as exists, in support of the proposition that a prevailing party on a non-fee claim may recover attorneys' fees, affirmatively requires that the fee claim, joined with the statutory non-fee claim, present a substantial constitutional question. *Gagne* v. *Mahre*, 594 F.2d 336 (2nd Cir. 1979); *Seals* v. *Quarterly County Court of Madison County, Tennessee*, 562 F.2d 390 (6th Cir. 1977).

The petitioners submit that the respondents' constitutional claim, supposedly based upon the due process and equal protection clauses, was wholly insubstantial. It is ludicrous to even suggest that the respondents could have prevailed at the District Court level or in the Court of Appeals on a claim brought solely, and adjudicated solely, upon a provision cognizable as a basis for fees under 42 U.S.C. §1988. Nonetheless, the Court of Appeals allowed the respondents fees of $1,500 in this case.

In *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 420 (1975), this Court reaffirmed the American Rule, *i.e.*, that prevailing litigants are not ordinarly entitled to collect reasonable attorneys' fees from the losers. The Court went on to declare that only in such cases where Congress has specifically carved out statutory exceptions to the general rule with respect to attorneys' fees awards do the federal courts have authority to award attorneys' fees. Congress passed the Fees Award Act in reaction to the Supreme Court's decision in *Alyeska Pipeline*. Congress did not include the Supremacy Clause, the Federal Declaratory Judgment Act, or the Social Security Act.

This Court has not decided that awards of attorneys' fees are proper in declaratory judgment cases, finding conflicts between federal statutory laws and state regulations, under the Supremacy Clause. Likewise, 42 U.S.C. §1988 does not justify such awards. The respondents may have cited §1983 in their pleadings and alleged a constitutional

claim, but relief was granted only upon a Supremacy Clause basis and it is clear that the respondents' alleged constitutional grounds was frivolous. The mere recitation of 42 U.S.C. §1983 and 28 U.S.C. §1343 as a jurisdictional basis should not justify an award of attorneys' fees. A decision by this Court on this issue would address a significant and wide-spread problem. States are increasingly being subjected to requests for attorneys' fees. Due to *Alyeska Pipeline,* 42 U.S.C. §1988 must be interpreted narrowly. The states are entitled to a pronouncement by this Court respecting the nature of cases which will qualify for attorneys' fees awards.

V.

The decision below, allowing the award of attorneys' fees to the respondents even though they were represented by publicly funded legal aid attorneys and thus incurred no expense for attorneys' fees in this action presents an important question of federal law which has not been, but should be, settled by this Court.

The Court of Appeals awarded the attorneys for the respondents a fee of $1,500 in connection with their work on the appeal of this case even though those attorneys were employed and salaried by a publicly funded legal corporation.

The purpose of the enactment of the Civil Rights Attorneys Fee Award Act was to provide for a monetary incentive making counsel available to "private attorneys general" seeking vindication of civil rights. That purpose is not fulfilled by an award of attorneys' fees to a public interest legal organization. Salaried attorney employees of legal aid organizations do not need, and would not receive even if attorneys' fees were awarded, an incentive to initiate lawsuits when it is part of their job, a job for

which they are paid from public funds. The award of attorneys' fees to the attorneys for the respondents in this case, where the very purpose of the Legal Services of Eastern Missouri, Inc., is to prosecute cases like this one, furthers no apparent legislative purpose. What it does do is grant legal aid agencies a windfall and a double-dip at public funds. See *Woolfolk* v. *Brown*, 358 F.Supp. 524 (E.D.Va. 1973); *Gaddis* v. *Wyman*, 336 F.Supp. 1225 (S.D.N.Y. 1972) and *Holtt* v. *Vitek*, 495 F.2d 219 (1st Cir. 1974).

The petitioners believe that a decision by this Court on the above issue would address a significant and widespread problem. States are involved in a considerable amount of litigation in which the opposing parties are represented by publicly funded legal aid attorneys. If the position of the Court of Appeals is allowed to stand numerous courts in this and other circuits will require states to pay fees to publicly funded legal counsel in numerous cases. The states are entitled to a pronouncement by this Court respecting whether or not publicly funded and salaried legal aid counsel are entitled to recover attorneys' fees under 42 U.S.C. §1988.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

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June, 1980

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 79-2006

LOU EMMA CHAMBLY, DENISE E. WILLIAMS, GEORGIA ANN LOEFFEL, CHRIS SCHOUE, and all others similarly situated,

Appellees,

v.

DAVID R. FREEMAN, Director, Missouri Department of Social Services. JOHN ZUMWALT, Director, Missouri Division of Family Services,

Appellants.

Appeal from the United States District Court for the Western District of Missouri

Submitted: April 15, 1980
Filed: April 24, 1980

Before STEPHENSON and McMILLIAN, Circuit Judges, and VIETOR,* District Judge.

ORDER

Upon a careful consideration of the record and of the briefs and arguments of the parties, this court has concluded that the judgment of the district court is based on findings of fact which are not clearly erroneous and that no error of law exists. We therefore affirm the decision of the dis-

*The Honorable Harold D. Vietor, United States District Judge for the Southern District of Iowa, sitting by designation.

trict court on the basis of its well-reasoned opinion, *see Chambly* v. *Freeman,* 478 F. Supp. 1221 (W.D. Mo. 1979).

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 79-2006 SEPTEMBER TERM, 1979

LOU EMMA CHAMBLY, et al.,
Appellees,

v.

DAVID R. FREEMAN, etc., et al.,
Appellants.

Appeal from the United States District Court for the Western District of Missouri

The Court having considered appellees' motion for award of attorneys' fees, together with appellants' suggestion in opposition thereto, it is now here ordered that the sum of FIFTEEN HUNDRED DOLLARS ($1,500.00) be awarded as appellees' attorneys' fees in the above case.

May 16, 1980.

APPENDIX C

UNITED STATES DISTRICT COURT, W. D. MISSOURI, C. D.

Nov. 1, 1979.

LOU EMMA CHAMBLY et al.,
Plaintiffs,

v.

DAVID R. FREEMAN et al.,
Defendants.

No. 79 4149 CV C.

A class suit was brought alleging that Missouri officials violated federal law in establishing absolute standardized deductions for work-related expenses in connection with determining qualification for AFDC benefits. The District Court, Elmo B. Hunter, J., held, inter alia, that violation of federal law was demonstrated.

Declaratory judgment entered.

1. Federal Civil Procedure 189

Class certification would be granted for suit in which welfare benefits claimants contended that Missouri officials violated federal law in not deducting all reasonably attributable work-related expense from gross amount of earned income when determining need for an amount of welfare benefits under aid to families with dependent children program. Social Security Act, § 402(a)(7), 42 U.S.C.A.

§ 602(a)(7); U.S.C.A.Const. Amends. 5, 14; Fed.Rules Civ. Proc. Rule 23(a), (a)(3), (b)(2), 28 U.S.C.A.

2. Social Security and Public Welfare 194.10

Missouri officials violated federal law and implementing regulations to the extent that they established absolute standardized deductions which did not permit individual offers of proof for food, clothing, and transportation expenses which might exceed standardized amounts and were reasonably attributable to production of earned income by AFDC applicants and recipients. Social Security Act, § 402 (a)(7), 42 U.S.C.A. § 602(a)(7); U.S.C.A.Const. Amends. 5, 14; Fed.Rules Civ.Proc Rule 23(a), (b)(2), 28 U.S.C.A.

Michael L. Lyons, Richard D. Chase, Legal Services of Eastern Mo., Inc., St. Charles, Mo., for plaintiffs.

William F. Arnet, Michael L. Boicourt, Asst. Attys. Gen., Jefferson City, Mo., for defendants.

OPINION AND ORDER

ELMO B. HUNTER, District Judge.

I.

This is an action in which plaintiffs[1] seek individually and on behalf of all other persons similarly situated declaratory and injunctive relief regarding defendants' practices of not deducting all reasonably attributable work related expenses[2] from the gross amount of earned income when determining the need for and the amount of welfare benefits under the Aid to Families with Dependent Children ("AFDC") program. Plaintiffs are alleging that defendants' policies are a violation of the Social Security Act, 42 U.S.C. § 602(a)(7), its implementing regulations, and the

Due Process and Equal Protection Clauses of the United States Constitution.

The case was fully tried to the Court on August 17, and September 6, 7, 1979. This Court has subject matter jurisdiction over this action.

II.

[1] Plaintiffs moved on September 6, 1979, for an order of this Court to certify this cause as a class action pursuant to Fed.R.Civ.P. 23(a) & 23(b)(2). The defendants did not file any objection to the certification motion.

In reviewing the standards for class action determinations, this Court concludes that this case may be maintained as a class action.

The class of persons affected by this litigation is very large. The defendants indicated that their best approximation of the number of employed heads of AFDC households for July, 1979, was 10,217.[3] Joinder of a group of this magnitude is clearly impracticable.

Further, plaintiffs are all raising the same question of law; i. e., whether the state policies in determining the allowability of certain work-related expense deductions is in contravention of applicable federal laws and pertinent sections of the United States Constitution. Also, the claims or defenses of the representative parties meet the typicality requirement of Rule 23(a)(3). Lastly, the Court has not been shown any reason why the representative parties do not fairly and adequately represent the class of persons in question.

The plaintiffs have sought declaratory and injunctive relief in this action, and as such, seek a class determination under Rule 23(b)(2). Rule 23(b)(2) mandates that the defendant must be in a posture of refusing to act on grounds generally applicable to the class. It appears to the Court

that defendants' challenged policies in the administration of Missouri's AFDC program adequately constitute the necessary refusal to act requirement of Rule 23(b)(2).

Therefore, the Court holds that this action may be maintained as a class action with the class defined as all employed Missouri citizens entitled to receive welfare benefits under the AFDC program.

III.

[2] The plaintiffs have alleged that defendants' policies with regard to the establishment of maximum standards for the deduction of work-related expenses violates 42 U.S.C. § 602(a)(7) and its implementing regulations, specifically 45 C.F.R. § 233.20(a)(7)(i). Basically, the pertinent sections of these provisions are as follows:

> "A state plan for aid and services to needy families with children must . . . (7) take into consideration . . . any expenses reasonably attributable to the earning of . . . income." 42 U.S.C. § 602(a)(7).
>
> Requirements for State Plans. A State Plan for . . . AFDC . . . must . . . (7) disregard of earned income. (i) Provide that the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of 'earned income', and all work expenses, personal and non-personal, will then be deducted." 45 C.F.R. § 233.20(a)(7)(i).

The section of Missouri's AFDC Manual[4] drawn into question by this litigation is Chapter I, Section III, (f)(5).[5]

IV.

Lou Emma Chambly

Plaintiff Chambly is employed by the St. Louis Public Library as a Public Service Assistant. Her gross salary is

$795.00 per month. In addition, Ms. Chambly receives an AFDC grant of $188.00 per month for herself and her minor children. She also receives food stamps.

Ms. Chambly testified that she eats her lunch each working day at Jerry's Restaurant which is across the street from the downtown St. Louis Public Library facility. She further testified that she carefully maintains records of her luncheon expenditures. Her testimony indicated that her daily lunch expenses exceeded $.60 per day. On cross-examination, Ms. Chambly stated that there is no prohibition at the St. Louis Public Library against "brown bagging." Ms. Chambly testified that she prefers to eat lunch at Jerry's Restaurant.

The St. Louis Public Library maintains a dress code for their employees. In order to comply with the dress code requirements, Ms. Chambly testified that she purchases office-type clothing that she otherwise would not purchase. She stated that she wears "cut-offs and T-shirts" while at home and "disco" clothes when going out in the evenings. According to her testimony, neither of these two clothing styles would be appropriate for her place of employment. Also, she testified that she does not wear her "work" clothes at times other than when she is at work or enroute to work. She spends approximately $30.00 a month for clothing related to her employment. Ms. Chambly acknowledged that nothing would prevent her from wearing her work clothes to functions other than her employment.

Chris Schoue

Plaintiff Schoue resides in Columbia, Missouri. She lives with her 5 year old child. Her employment as a secretary is with MFA Insurance Co., and her gross pay is $230.00 every two weeks. She works 8 a.m. to 5 p.m. Mondays through Fridays and receives 8-10 hours of overtime work

each month. Since July, 1979, she is receiving $43.00 per month through AFDC. She receives no food stamps.[6]

Ms. Schoue testified that she commutes 23 miles round-trip each day to her job. On cross-examination, she indicated mileage of 530 miles for July, 1979 with 43 miles for non-work-related travel. Ms. Schoue owns a 1968 Pontiac Le-Mans automobile that she testified operates for 9—10 miles on a gallon of gasoline. In the six months prior to July, 1979, Ms. Schoue testified that she has spent $650.00 in repairs on the automobile. She stated that if it was not for her job, she would sell the automobile.[7]

Meal expenses for Ms. Schoue amount to $1.50 per working day. She testified that she eats at Hardee's Hamburger Restaurant, although there is no prohibition against employees bringing their lunch to MFA Insurance Co.

In regards to her work clothing, Ms. Schoue stated that she had been told of a dress requirement when she began her employment at MFA Insurance Co. Basically, she testified that she can dress "casually, but neat." In conjunction with this requirement, Ms. Schoue said she bought many items to wear to work, and that she never wears these "work clothes" for other purposes.

Georgia Ann Loeffel

Plaintiff Loeffel resides in Fenton, Missouri, and is employed by St. Luke's Hospital West in St. Louis County, Missouri. She works as a lab assistant Mondays through Fridays from 8:30 a.m. to 4:30 p.m. She has one child aged 9 years. She testified that her take-home pay is approximately $260.00 every two weeks. She stated that her application for AFDC benefits was denied and that she receives no food stamps. Ms. Loeffel's testimony revealed that she drives 34 miles round-trip each day from her mobile home to her employment. She drives a 1977 Ford Pinto automo-

bile. She stated that her costs of operation for the automobile are quite high due to a $738.00 per year high risk insurance premium that she must pay.

St. Luke's Hospital does not require uniforms for persons in Ms. Loeffel's position. Hence, Ms. Loeffel testified that she must purchase pants and blouses for her employment. She stated that 10% of the utilization of these clothes is for nonwork-related purposes.

V.

The state of Missouri voluntarily participates in the AFDC program.[8] As such, the state is bound to adhere to federal law governing the operation of the program. *See, Rosado* v. *Wyman,* 397 U.S. 397, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970); and *King* v. *Smith,* 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968).

The substantive provisions of 42 U.S.C. § 602(a)(7) of the Social Security Act were closely scrutinized by the Supreme Court in *Shea* v. *Vialpando,* 416 U.S. 251, 94 S.Ct. 1746, 40 L.Ed.2d 120 (1974). There, the Court held invalid a Colorado regulation that established a uniform allowance for work-related expenses taken as a whole. The facts in *Shea* differ from the facts before this Court to the extent that the infirm Colorado regulation did not permit any itemization for categories of work-related expenses. Nevertheless, the basic thrust of the challenge in *Shea* was directed against a standard allowance that did not permit AFDC applicants to demonstrate higher expenses,[9] which is essentially analogous to the situation in this action. Here, Missouri allows for itemization of work related expenses,[10] but has established absolute limitations on the amounts of the expense deductions in some categories, namely food, clothing and transportation.[11]

The defendants argued that the issue in this case in light of *Shea* is whether the standardized maximum allow-

ances in each itemized category are reasonable.[12] This Court can not agree with the defendant's characterization of *Shea*. The import of the holding in *Shea* is that a standard allowance is permissible, but the standardized figure can not serve as a maximum limitation on the amount of expenses an individual AFDC applicant may be able to show. The defendants are not violating § 602(a)(7) by utilizing standard work expense deduction figures. Rather, defendants are violating the mandates of the statute by not allowing AFDC applicants an opportunity to prove that they have reasonable expenses in excess of the standardized maximums. *Shea* v. *Vialpando, supra; See also, Anderson* v. *Graham,* 492 F.2d 986 (8th Cir. 1973); *Perez* v. *Chang,* 438 F.Supp. 238 (D.Haw. 1977); *Fones* v. *Percy,* No. 78—C—191 (W.D. Wis.1978), *aff'd.,* 601 F.2d 600 (7th Cir. 1979).[13]

While the defendants' evidence tended to show the reasonableness of the standard deductions in other contexts,[14] such evidence simply is not relevant so an interpretation of the requirements of § 602(a)(7).[15] This Court notes that efficient management of governmental services requires statistical averages in many situations. But, the Supreme Court in *Shea* made clear that the intent of Congress in passing § 602(a)(7) was to insure *individualized* treatment for needy citizens. 416 U.S. 251 at 261, 94 S.Ct. 1746, 40 L.Ed.2d 120.

Indeed, much of the defendants' argument is to the effect that allowing AFDC applicants to show their true work-related expenses would create tremendous difficulties in terms of administrative efficiency.[16] Mr. John Zumwalt, Director of the Missouri Division of Family Services, testified that adopting a "case by case" verification procedure would be "unworkable". This argument seems to lack merit in light of defendants' regulation that currently *requires* verification of work-related expenses when the

claimed expenses do not seem reasonable to the caseworker. *See,* Missouri AFDC Manual, Chapter I, Section III, (f)(5).

The determination of eligibility given the nature of the AFDC program is necessarily a case by case process. In that the defendants are not barred under *Shea* from utilizing standardized work expense deductions for those applicants who choose not to attempt to show expenses in excess of the standard amounts, the additional burden of allowing that class of applicants who choose to demonstrate to the satisfaction of defendants that their expenses are higher does not seem appreciably greater than the verification procedures already in effect.

Whatever the merits of the defendants' administrative convenience arguments, the Supreme Court in *Shea* indicated that the clear expression of congressional intent requiring consideration of any expenses reasonably attributable to the earning of income necessitates rejection of any state claim of administrative convenience. 416 U.S. 251 at 265 n. 13, 94 S.Ct. 1746, 40 L.Ed.2d 120.

VI.

This Court finds it unnecessary to reach the constitutional claims of plaintiffs given that the statutory grounds here are dispositive. *See, Shea* v. *Vialpando, supra,* and *Hagans* v. *Lavine,* 415 U.S. 528, 94 S.Ct. 1372, 39 L.Ed.2d 577 (1974).

ORDER

Upon careful consideration of the issues presented in this action, it is hereby

ORDERED that a judgment be issued declaring that defendants have violated 42 U.S.C. § 602(a)(7) and its implementing regulations insofar as defendants have established absolute standardized deductions which do not permit individual offers of proof for food, clothing and transportation expenses which may exceed the standardized amounts and are reasonably attributable to the production of earned income by AFDC applicants and recipients. It is further

ORDERED that the defendants are hereby enjoined from violating 42 U.S.C. § 602(a)(7) by enforcing those portions of Missouri Division of Family Services' Manual, Chapter I, Section III, (f)(5), insofar as the regulations establish absolute standardized deductions which do not permit individual offers of proof for food, clothing and transportation expenses which may exceed the standardized amounts and are reasonably attributable to the production of earned income by AFDC applicants and recipients.

IT IS SO ORDERED.

FOOTNOTES

[1]Named plaintiff Denise E. Williams moved to dismiss her complaint at trial and her motion was granted.

[2]The plaintiffs have focused their challenge in this action upon defendants' work-related expense deduction policies for food, clothing and transportation. *See,* pp. 3 & 16 of plaintiffs' Post-Trial Brief.

[3]*See,* Defendants' Answer to Plaintiffs' Interrogatory No. 1.

[4]Missouri's AFDC Manual is composed of the State's operating procedures for the AFDC program.

[5]In relevant part, this section allows for an AFDC claimant to deduct "actual personal work related expenses" in excess of the "personal standard" which is a standard deduction of $30.00 allowed for monthly work-related expenses like "clothing (such as uniforms and special shoes, etc.), transportation, lunches, union dues, mandatory retirement, etc." If the applicant elects to claim actual expenses, then the applicant must fill out Form IM-2C which categorizes the claimed expenditures. The regulation is facially clear that only clothing expenditures for uniforms and special shoes can be claimed. Further, transportation expenses are allowed at a maximum rate of 15 cents per mile if the applicant uses a private automobile to travel to and from work. Meal expenses incurred because of employment are limited to a standard 60 cent deduction. If these expenditures exceed the "personal standard" deduction of $30.00, then the difference between the $30.00 figure and what is actually spent is allowed (subject to the previously indicated limitations).

The regulation also requires that the caseworker seek verification of the claimed expenses where "practical to do so" and in all cases the expenses must be explained. Further, if the claimed expenses do not seem reasonable in the caseworker's judgment, then "verification must be provided."

[6]The Court notes the devastating effect of the high rate of inflation upon persons engaged in minimum wage occupations. It is an unfortunate situation when a person like Ms. Schoue who works well in excess of 50 hours each week can not earn enough to support herself and her one child without financial assistance in the form of public welfare.

[7]Ms. Schoue's testimony indicated that public transportation is not available in Columbia, Missouri, from her home to her employment.

[8]*See,* Stipulation, filed August 17, 1979.

[9]The Supreme Court in an unanimous opinion construed the issue in *Shea* as follows:

> "We granted certiorari . . . to determine whether, in light of [§ 602 (a)(7)], a State may adopt a standardized allowance for expenses attributable to the earning of income which does not allow an applicant to deduct expenses that exceed the standard. We hold that it may not." 416 U.S. 251 at 252, 94 S.Ct. 1746 at 1749-1750, 40 L.Ed.2d 120.

[10]For example, the Missouri AFDC Manual, Chapter I, Section III, (f)(1—4), indicates that alimony and child support payments, wage garnishments, city earnings taxes, and child care costs are all completely deductible.

[11]With regard to clothing expenses, the limitation is an absolute prohibition, except for uniforms or special shoes expenses which are allowed at their actual costs.

[12]To support their reading of *Shea*, the defendants point to the following language in the opinion:

> "By its terms, [§ 602(a)(7)] requires the consideration of 'any' reasonable work expenses in determining eligibility for AFDC assistance. In light of the evolution of the statute and the normal meaning of the term 'any', we read this language as a congressional directive

that no limitation, apart from that of reasonableness, may be placed upon the recognition of expenses attributable to the earning of income. Accordingly, a fixed work-expense allowance which does not permit deductions for expenses in excess of that standard is directly contrary to the language of the statute.

Standardized treatment of employment-related expenses without provision for demonstrating actual and reasonable expenses in excess of that standard amount, such as Colorado has adopted, threatens to defeat the goal Congress sought to achieve in adopting the mandatory work-expense recognition provisions of [§ 602(a)(7)]. By limiting employment expenses to $30 per month, the Colorado regulation results in a disincentive to seek or retain employment for all recipients whose reasonable work-related expenses exceed or would exceed that amount. Accordingly, the Colorado regulation conflicts with federal law and is therefore invalid.

It is, of course, not the adoption of a standardized work-expense allowance per se which we hold to be violative of [§ 602(a)(7)] of the Act, but the fact that the standard used by Colorado is in effect a maximum or absolute limitation upon the recognition of such expenses. As the Court of Appeals correctly observed, a standard allowance would be permissible and would substantially serve petitioners' interests in administrative efficiency, if it provided for individualized consideration of expenses in excess of the standard amount [citations]. Such a standard allowance would comport fully with the statutory requirement that any reasonable work expenses be considered, and would allow individualized treatment where necessary." 416 U.S. 251 at 260, 264 & 265, 94 S.Ct. 1746 at 1755-1756, 40 L.Ed.2d 120.

[13]Mr. Bert Lanius of the Kansas City Office of the Department of Health, Education and Welfare ["HEW"] testified that HEW had approved of the Missouri AFDC plan in 1976. In *Shea*, the Supreme Court declined to grant any deference to administrative practice in view of the clarity of the statutory requirements in § 602(a)(7), 416 U.S. 251 at 262, 263 n. 11, 94 S.Ct. 1746, 40 L.Ed.2d 120.

[14]Mr. Gerald Yarrington, a representative of the Division of Accounting for the state of Missouri testified that state employees are paid 17 cents per mile for use of their personal automobiles when engaged in official business. Also, defendants noted in their Post-Trial Brief that the Internal Revenue regulations allow 17 cents per mile as a deduction for business related travel.

[15]*See*, Judge Doyle's opinion in *Fones* v. *Percy*, No. 78—C—191 (W.D. Wis. 1978), *aff'd.*, 601 F.2d 600 (7th Cir. 1979).

[16]Mr. Lanius testified that Missouri's "error rate" in administering its AFDC program was 10%. In his opinion, the adoption of a receipt verification system would cause an increase in the error rate by 3% which could lead to a penalty reduction in federal financial participation in Missouri's program.